

IV. Remarks

Responsive to the outstanding Examiner's Action, the applicant has carefully studied the Examiner's comments. Favorable reconsideration of this application is respectfully requested in light of the following detailed discussion.

Claims 12-28 are pending in the application. Claims 12-24 and 26-28 are rejected. Claim 25 is withdrawn. Claims 12 and 26 have been amended. A listing of the pending claims, along with a status indicator of each claim, appears above.

Claims 12-17, 19-21 and 26-28 are rejected under 35 USC 102(b) as being anticipated by WO 01/82399.

According to the MPEP, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” See MPEP 2131 (quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (CAFC 1987)) (emphasis added).

Independent claims 12 and 26 have been amended to clarify that the at least one channel structure is formed by the foil comprised of a plurality of channels wherein a substructure is superimposed above the microstructures only between the channels.

The Examiner indicated in the Office action that the '399 publication teaches microstructures in Fig. 3 of the publication. However, it is clear from this figure, as well as the entire disclosure of the publication, that an additional substructure is not taught. Further, a substructure superimposed above the alleged microstructures, as now required by the independent claims, also is not taught by the publication. Of course, if the publication does not teach a substructure, it also does not teach that the substructure is located only between the channels, which is also now required by the independent claims.

A 35 USC 103(a) rejection has been provided on claims 18 and 22-24 based on the '399 publication and U.S. Patent No. 6,555,261 to Lewinski. At the outset, Applicant respectfully submits that the '261 is not a proper reference to be combined with the '399 publication as it granted less than one year before Applicant's filing date. Applicant requests that for at least this reason, the 103(a) rejection be removed.

The Examiner has indicated that the '261 teaches Applicant's substructures. Specifically, the Examiner cited column 4, line 4 of the '261 patent as teaching substructures. At the cited passage, the '261 patent teaches channels and microfeatures in the base of the channels. It is clear, however, that the disclosure does not teach or make obvious a substructure superimposed *above* the microstructures *and only between* the channels, as required by the amended claims. Instead, as the quoted passage from the '261 patent indicates, the alleged microfeatures (alleged to be equivalent to Applicant's substructures) are located in the base of the channels (alleged to be equivalent to Applicant's microstructure). For the '261 patent to be relevant, the microfeatures would have to be superimposed above the channels and also be located between the channels. Not only would such a relationship between the microfeatures and the channels be impossible, but such a relationship would have no meaning or purpose to the cell of the '261 patent.

In view of the above, it is respectfully submitted that the 102(b) rejection does not teach each of the limitations of claims 12 or 26 as amended. Additionally, the combination of the references in the 103(a) rejection does not teach or make obvious, taken individually or in combination, all of the limitations of either claim 12 or 26 for the reasons stated above.

In light of the above discussion and the amendments to claims 12 and 26, amended claims 12 and 26 of the present invention are patentable. Furthermore, claims 13-24 and 27-28 each depend on claims 12 or 26, either directly or indirectly, and contain all of the limitations thereof. Therefore, because claims 12 and 26 are patentable and claims 13-24 and 27-28 each depend on claims 12 and 26, claims 13-24 and 27-28 are patentable over the references.

No fees are believed due with this response. In the event that fees are due, please charge them to Deposit Account No. 13-1816. Kindly credit any overpayment to the same account. In either case, please associate D030001-17858001 with any credit or debit of the Deposit Account.

In light of the remarks above, it is believed the claims are now in condition for allowance and an early Notice of Allowance is respectfully requested.

Should the Examiner wish to modify any of the language of the claims, applicant's attorney suggests a telephone interview in order to expedite the prosecution of the application.

Respectfully submitted,



Stephen P. Evans
Registration No. 47,281

ATTORNEYS

Marshall & Melhorn, LLC
Four SeaGate, Eighth Floor
Toledo, OH 43604
ph: (419) 249-7100
fax: (419) 249-7151